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# REPORT

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## JUDICIAL SECTION

OF

## 1928 CONFERENCE

ON THE

## CRIMINAL LAW

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NO "CRIME COMMISSION" in the many states where such bodies have been organized has had the benefit of a state wide judicial conference such as was assembled in Philadelphia on April 6th and 7th, 1928, at the call of Chief Justice von Moschzisker.

The deliberations were participated in by one hundred and eight judges, and the resolutions set forth in this pamphlet represent in almost every instance a very large majority vote—and in some cases, a unanimous vote—upon the subjects presented.

With this distinguished weight of thought to guide it, the Pennsylvania Crime Commission will endeavor to translate into legislative form many of the conclusions of the conference. While this work is being completed, the Commission takes pleasure in publishing, for the information of the judiciary and the benefit of the general public, the report of the Judicial Section as presented to it.



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REPORT OF JUDICIAL SECTION  
OF  
1928 CONFERENCE ON THE CRIMINAL LAW.

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*To the Crime Commission appointed by the Governor of the Commonwealth under authority of Concurrent Resolution No. 86, approved May 13, 1927, P. L. 1035:*

The Conference of Judges held at Philadelphia on Friday and Saturday, April 6 and 7, 1928, was called by the Chief Justice of Pennsylvania, at the request of Attorney General Baldrige and Charles E. Fox, Esq., Chairman of the Commission on Penal Laws. When the request was received, the Chief Justice laid it before the Supreme Court, and that body determined to take a referendum of those who would be asked to attend the conference, if held. Accordingly a letter was sent to all of the judges who sit in the criminal courts of the Commonwealth (Exhibit "A") asking whether, in their opinion, such a meeting should be called; and, as April 6th and 7th seemed to be the only days which fitted into the calendars of most of the courts of the various counties, those addressed were asked, if they favored the proposed conference, whether these dates would suit them. The replies received were almost unanimous in favor of holding the conference, on the days suggested. On March 2, 1928, a letter calling the conference (Exhibit "B"), was sent to the 14 judges of the appellate courts, to the 116 judges of the Courts of Common Pleas, to the 10 judges of the Municipal Court of Philadelphia and to the 6 judges of the County Court of Allegheny County; this was followed by another general letter (Exhibit "C") outlining the program for the conference and enclosing an agenda (Exhibit "D") for prior consideration.

The conference was attended by all 7 members of the Supreme Court, 5 members of the Superior Court, 84 members of the Common Pleas, all 10 members of the Municipal,

2 members of the County Court, 2 ex-judges of the Common Pleas, and 2 judges of the Orphans' Court, privileged to sit in the criminal courts when called into the Common Pleas,—in all, 108 judges. For a full list of those in attendance see Exhibit "E."

Prior to the conference the following committees were constituted:

*Committee on Arrangements—*

ROBERT VON MOSCHZISKER, *Chairman*.  
 WILLIAM B. LINN, *Vice-Chairman*, Superior Court.  
 THOMAS F. BAILEY, Bedford County.  
 WILLIAM F. HARGEST, Dauphin County.  
 J. WILLIS MARTIN, Philadelphia County.  
 RICHARD W. MARTIN, Allegheny County.  
 WM. S. MCLEAN, JR., Luzerne County.  
 MARION D. PATTERSON, Blair County.  
 RUSSELL C. STEWART, Northampton County.

*Committee on Co-operation between various groups in conference—*

JOHN W. KEPHART, *Chairman*, Supreme Court.  
 A. R. CHASE, Clearfield County.  
 JAMES B. DREW, Allegheny County.  
 J. FRANK GRAFF, Armstrong County.  
 WM. A. McCONNEL, Beaver County.  
 WM. M. PARKER, Venango County.  
 CLAUDE T. RENO, Lehigh County.  
 URIAH P. ROSSITER, Erie County.  
 ROBERT S. STOTZ, Northampton County.

Chief Justice Robert von Moschzisker was chosen as Chairman of the Judicial Section, and Hon. James Gay Gordon, Jr., of Philadelphia, as Secretary.

In opening the first meeting of the conference, at a joint session attended by the assembled judges, district attorneys, and the members of the Commission, before the latter two groups retired for their own separate conference, the chair-



man, in order to indicate the general purpose of the meeting and explain the work about to be done by the judicial Section, said, among other things: "Those who formulated the agenda (Exhibit "D") for the judicial section thought we should, at the present meeting, take up only matters of substance, not of form, however important the latter might be. It also seemed best not to enter upon what may be termed the social causes of crime, nor attempt to consider extraneous, alleged scientific, methods of crime prevention, but to devote ourselves to solving some of the most pressing problems which we, as judges, meet in the actual trial and sentencing of defendants in the criminal courts. Even within the restricted areas which the judicial section will enter, we have narrowed the program for our work; this course was decided on, not because those in charge of the preliminary arrangements failed to appreciate the many diverse themes that might very properly be considered, but rather because of the impracticability of undertaking additional subjects in the limited time at our disposal. The subjects for consideration by the Judicial Section, set forth in the agenda, are restricted to those which have to do with the trial and sentencing of persons accused and convicted of crime. We have not gathered to draft statutes; we are here merely to formulate our views, after discussion, and to express them to the Crime Commission, which, in turn, will advise the Legislature, whose duty it is to make the statute law and to initiate constitutional amendments. We need not even debate whether certain of the suggestions on our program require constitutional amendments. If such amendments are required to give validity to proposed legislation, let us take it for granted, so far as our present work is concerned, that, should we recommend anything which calls for a change in the fundamental law, and our advice is accepted, the change will be made in due order." The conference accepted these guiding suggestions, which are here quoted so that the work of the judicial section may be more readily understood. (Copy of speech, in full, attached, marked Exhibit "F").

After discussion, the following resolutions (the numbers corresponding with the numbering of the questions on the agenda) were passed practically with unanimity:

1. *Resolved*, That the law forbidding adverse comment by court or counsel, on the failure of a defendant on trial to offer himself as witness, should be repealed, to the end that all legitimate argument and comment thereon shall be allowed.

2. *Resolved*, It is the sense of the conference that, whenever, in the opinion of the trial court, the police or court records sufficiently indicate that a defendant is a professional criminal, the Commonwealth should be permitted to present that fact in its case in chief, and that such police and court records should be admissible in evidence, in the discretion of the trial judge.

3. *Resolved*, That the right to separate trials of defendants jointly indicted for capital offenses should rest in the sound discretion of the trial court as in other cases.

4. *Resolved*, That the law should require the examination of prospective jurors on their *voir dire* to be conducted exclusively by the trial judge, subject to the right of counsel, after such examination, to suggest additional questions to be put to the prospective juror by the trial judge, in his discretion.

(The suggestion was made by Judge Smith, of Susquehanna County, that when impanelling juries in criminal cases, the jurors called for examination on their *voir dire* should be examined separate and apart from the balance of the panel; but since this would not be necessary in many cases, and since it is a course which can, under the law as it now stands, be pursued in a proper case without an enactment upon the subject, the matter was not submitted to the conference for action.)

5. *Resolved*, That in all criminal cases, except capital cases and where a constitutional question is involved, the laws should be so amended as to permit appeals only after



allowance thereof by a judge of the appellate court to which the appeal lies.

5 (a). *Resolved*, That the time for taking appeals in criminal cases should be limited to three weeks.

6 (a) (b). *Resolved*, That a law should be adopted providing that in criminal prosecutions all motions preliminary to trial, such as demurrers to indictments, motions to quash and for bills of particulars, shall be deemed to have been decided against the party advancing them and be subject to assignment as error on appeal from final judgment in the case, unless, within four days after hearing the same, the trial court shall decide them otherwise; and that all motions subsequent to the verdict shall in like manner be deemed to have been dismissed, unless the court shall decide otherwise within 30 days after the hearing: provided, that the court may from time to time by written order suspend for a fixed period, at no one time to exceed 30 days, the operation of this rule.

The conference thereafter adopted the following resolution as its final judgment in the matter of subjects No. 6 (a) and (b), and which, if accepted by the Commission, will take the place of the latter:—

6 (a) (b). *Resolved*, That the Legislature be requested to pass a general act authorizing the appellate courts of the Commonwealth, with the approval of a majority of the judges of the courts of quarter sessions of the peace and oyer and terminer, to adopt, promulgate and enforce such rules as will expedite and standardize the trial and punishment of those charged with criminal offenses, but so always as not to alter the statutory definition of any crime or to increase or diminish the punishment provided therefor.

6 (c-1). *Resolved*, That legislation should be enacted establishing a uniform rule of four days after the trial within which motions for a new trial and in arrest of judgment must be filed.

6 (c-2). *Resolved*, That it is the sense of the conference that in granting a new trial the court hearing the motion should file of record a general statement of its reasons for that course.

(This is an expression of the view of the assembled judges, not a suggestion for legislation.)

7. *Resolved*, That it is the sense of the conference that the trial of criminal cases not involving the higher felonies, by a judge without a jury, if the accused voluntarily gives his consent thereto, is desirable and should be incorporated in our penal system.

8. *Resolved*, That it is the sense of the conference that a system of increasingly graduated penalties dependent upon the number of former convictions of the accused but without the necessity of including such former convictions in the indictment on trial, should be incorporated in our penal system.

9. *Resolved*, That the Act of June 29, 1923, P. L. 975, commonly known as the Ludlow Act, has been found unsatisfactory in its practical operation under present conditions, and should be repealed.

Propositions 10, 11 and 12 on the agenda were disposed of as follows:—

10. The discussion of this proposition resulted in a motion, which was carried, that a committee be appointed by the chairman to investigate and report upon the general subject of the best method of correcting the abuses and deficiencies incident to the present system of trial by jury of questions depending for their solution upon scientific or special knowledge and experience, and, particularly, to consider means by which the testimony of expert witnesses may be protected from the harmful influences of partisan interest.

11. After a discussion of the subject covered by the eleventh proposition of the agenda, it was moved and car-

ried that a committee be appointed by the chairman to investigate and report upon a suitable method of furnishing trial courts with reliable information as to the mental condition of persons indicted for or convicted of crime, and the existence of any mental disease or defect which would affect the responsibility of such persons. The committee was also instructed to report upon the desirability of separating the trial of a defense of insanity from other defenses in criminal cases, so as to have that issue tried at a different time before a special jury, and, if the recommendation should be in favor of so separating the trial of that defense, to suggest methods of procedure.

12. After discussion, the conference decided that a committee, to be appointed by the chairman, should be instructed to consider the present methods of selecting jurors in the various judicial districts of the Commonwealth, and to make such recommendations for changes therein as, under the conditions existing in the different districts, may be conducive to an improvement in the character of jurors selected.

The chairman appointed committees as follows:—

On proposition Nos. 10 and 11:—

MR. JUSTICE WILLIAM I. SCHAFFER, Supreme Court, *Chairman*.

JUDGE JAMES M. BARNETT, Perry County.

JUDGE E. M. BIDDLE, JR., Cumberland.

JUDGE FRANCIS S. BROWN, JR., Philadelphia.

JUDGE FRANK L. HARVEY, Clarion.

JUDGE BENJAMIN R. JONES, Luzerne.

JUDGE WILLIAM H. KELLER, Superior Court.

JUDGE HARRY S. McDEVITT, Philadelphia.

JUDGE DONALD P. McPHERSON, Adams.

JUDGE HORACE STERN, Philadelphia.

JUDGE ROBERT A. STOTZ, Northampton.

JUDGE W. BUTLER WINDLE, Chester.

JUDGE J. AMBLER WILLIAMS, Montgomery.

On proposition No. 12:—

JUDGE THOMAS D. FINLETTER, Philadelphia County,  
*Chairman.*

JUDGE A. R. CHASE, Clearfield.

JUDGE JOHN E. FOX, Dauphin.

JUDGE RICHARD HENRY KOCH, Schuylkill.

JUDGE GEORGE W. MAXEY, Lackawanna.

JUDGE WM. S. MCLEAN, JR., Luzerne.

JUDGE FRANK P. PATTERSON, Allegheny.

On Resolution (c) below:—

JUDGE WILLIAM B. LINN, Superior Court, *Chairman.*

JUDGE JOHN E. EVANS, Cambria County.

JUDGE WM. C. FERGUSON, Philadelphia.

JUDGE WM. M. HARGEST, Dauphin.

JUDGE ELDER W. MARSHALL, Allegheny.

JUDGE PAUL N. SCHAEFFER, Berks.

JUDGE A. T. SEARLE, Wayne.

The Chairman and the Secretary of the conference are *ex officio* members of the above committees.

The committees are expected to be prepared to report at the call of the chair in the month of November, 1928.

It was further

(a) *Resolved*, That it is the sense of the conference that the indiscriminate allowance, under existing laws, of a supersedeas in criminal cases where the appeal is without substantial merit, should, in practice, be more generally discouraged.

(b) *Resolved*, That it is the sense of the conference that the courts should expedite the trial and disposition of criminal cases as much as practicable, and that trials should not be continued except for substantial reasons.

(c) *Resolved*, That a committee be appointed to investigate and report at a future conference whether the law should not be altered so as to permit the rendering

of verdicts by agreement of less than twelve jurors in all except homicide cases. (Carried 26 to 25.)

(d) *Resolved*, That the Judicial Conference shall be a continuing body and shall meet at the call of the Chief Justice of the Commonwealth. The Committees on Arrangements and Co-operation shall be authorized to make the report to the Commission on Penal Laws and to continue in existence as a part of the organization. The Chief Justice shall be authorized to appoint such other committees, and to refer such matters to them as in his judgment shall be proper. (Carried unanimously.)

(e) *Resolved*, That one hundred and eight judges, who administer the criminal law of Pennsylvania, convened in conference at Philadelphia to consider the state of the criminal law and to make recommendations for its improvement, so that it may more fittingly serve the needs of the present time, send their felicitations to the Honorable William Howard Taft, Chief Justice of the United States, who long since inspired the general movement in which they are engaged, and wish him a long life of health, happiness and continued service to the public. (Carried unanimously.)

(Signed) ROBERT VON MOSCHZISKER,  
*Chairman.*  
 JAMES GAY GORDON, JR.,  
*Secretary.*



## SUPPLEMENTAL REPORT.

At the conclusion of the conference, the Chairman and other officers were thanked by a rising vote; they were requested to express appreciation to the Law Association and to the Lawyers' Club of Philadelphia, and to Mr. Thomas Robins, the Prothonotary of the Supreme Court at Philadelphia, for their hospitality, Mr. Robins having entertained all the visiting and local judges at luncheon at the Rittenhouse Club on Friday, and the Law Association and the Lawyers' Club having entertained all participants at the conference, with the ladies who accompanied them, at luncheon in the ballroom of the Bellevue-Stratford Hotel on Saturday.

The Chairman communicated the expressions of appreciation of the Conference to the Hon. Francis Shunk Brown, Chancellor of the Law Association and President of the Lawyers' Club of Philadelphia, and to Mr. Robins. He also sent the greetings of the Conference to Chief Justice Taft, from whom the following reply was received: "I am greatly indebted to your Conference of the Judges of Pennsylvania for the kindly message which you send me. I think your meeting must be productive of good. I am greatly in favor of the solidarity of the judicial force so that with the same aims we shall adopt more or less the same methods. I welcome the example that you have set for other judges in other States in respect to having such a discussion as you have had."

(Signed) ROBERT VON MOSCHZISKER,  
*Chairman.*  
JAMES GAY GORDON, JR.,  
*Secretary.*



## EXHIBITS.



## EXHIBIT "A."

SUPREME COURT OF PENNSYLVANIA  
Judges' Chambers.

PHILADELPHIA, December 31, 1927.

MY DEAR JUDGE:—I recently received a letter from Attorney General Baldrige and District Attorney Charles Edwin Fox, Philadelphia County, asking that a conference of Common Pleas judges, who sit in the criminal courts of the State, should be called to meet in Philadelphia at the same time that the Crime Commission, authorized by the Legislature of 1927, holds its conference in this city. Enclosed find a copy of this letter. Please let me know whether you approve the idea of such a conference, and, if so, whether Friday and Saturday, April 6 and 7, would suit you for the meeting, and I shall later on inform you as to the result of this referendum.

An early reply will be appreciated by

Yours very truly,

ROBT. VON MOSCHZISKER,  
*Chief Justice.*

## COMMONWEALTH OF PENNSYLVANIA

## Crime Commission

CHARLES EDWIN FOX,  
Philadelphia  
*Chairman*

ROBERT A. STOTZ,  
Easton  
*Vice-Chairman*

J. FRANK GRAFF,  
Kittanning

MILES B. KITTS,  
Erie

LOUIS N. ROBINSON,  
Swarthmore

HAROLD A. SCRAGG,  
Scranton

WILLIAM F. STADTLANDER,  
Pittsburgh

MRS. HENRY D. JUMP,  
Philadelphia

THOMAS J. BALDRIGE,  
*Attorney General*

Ex-Officio Harrisburg

EARL JAY GRATZ,  
*Executive Secretary.*

1514 Bankers Trust Building  
Philadelphia

NOVEMBER 28, 1927.

*Hon. Robert von Moschzisker, Chief Justice of the Supreme Court of Penna., Philadelphia, Pa.*

MY DEAR JUDGE VON MOSCHZISKER:—The undersigned constitute a sub-committee of the Crime Commission of Pennsylvania, authorized by the Legislature of 1927. The duties of this Commission are generally stated by the Concurrent Resolution to be:—"A study of the laws conditions and practice of this Commonwealth relating to crimes, criminal procedure and criminals, to examine the crime situation in the Commonwealth of Pennsylvania, the procedure methods and agencies concerned with the detection of crime, the apprehension, bailing, prosecution and trial of persons accused of crime, and the punishment, treatment and pardon of convicted persons, and all other matters which have relation directly or indirectly to the crime situation in this Commonwealth, and to suggest revisions and amendments to the statutes of Pennsylvania which relate to any of the foregoing matters."

It is our opinion that the work of the Commission can be greatly facilitated if you were to call a conference of the Judges of Pennsylvania who sit in the criminal courts. At such a conference many of the matters with which the Commission is charged could be discussed by these Judges and their conclusions would be of great value in the further deliberations of the Commission.

At the recent conference of all Crime Commissions throughout the country, held in Washington, a definite impetus to its work was given by the presence of the Chief Justice of the Supreme Court of the United States and a number of judges having to do with criminal procedure in various parts of the country.

In conclusion, we cannot urge upon you too strongly the definite results which we believe will enure to the whole matter of criminal procedure in this state if such a conference were to be held.

Yours very truly,

(Signed) CHARLES EDWIN FOX  
THOS. J. BALDRIGE

## EXHIBIT "B."

## SUPREME COURT OF PENNSYLVANIA

PHILADELPHIA, March 2, 1928.

DEAR JUDGE:—In compliance with the request of the Penal Law Commission of Pennsylvania, and as a result of the referendum recently taken of the judges of this State who administer the criminal law, a conference of such judges will convene in the Court Room of the Supreme Court, 458 City Hall, Philadelphia, on Friday, April 6, 1928, at 10 o'clock A. M.

The call for this meeting has been approved by the judges of the Supreme and Superior Courts, by 108 judges of the Courts of Common Pleas, by 2 Orphans' Court judges who make a practice of sitting in the Common Pleas, and by 13 of the 16 judges who compose the Municipal Court of Philadelphia and the County Court of Allegheny County.

The dates, Friday and Saturday, April 6th and 7th, do not suit 14 of the judges who desire the conference, but they seem to be the only days which fit into the calendars of most of the courts of the State; so, after consideration, it was decided they would have to stand.

Of the subjects suggested for consideration, the 12 set forth in the enclosed pamphlet have been selected to be brought before the conference, with the thought that definite recommendations may be made as to some of them, and committees appointed to study the others, and report at a later meeting.

Any recommendations which this conference of judges may decide on will be made to the Penal Law Commission, a body appointed by the last Legislature (P. L. 1927, p. 1035) "To study the laws, conditions and practice relating to crimes \* \* \* to suggest revisions and amendments," and to report to the next legislature. The meeting of judges is called at the request of the Penal Law Commission for the purpose of making suggestions to it. It is not proposed that we draw bills for or tender advice to the legislature.

This communication is sent out so that you may know



in advance the matters which will be considered at the conference, and have time to give some thought to them. The subject enumerated in the enclosed pamphlet will be first in order; after which, the meeting will be open for any subject relevant to the criminal law that may be brought before it.

The following committee has been appointed to take charge of the conference:—

Robert von Moschzisker, *Chairman*,  
 Chief Justice, Supreme Court, Philadelphia.  
 William B. Linn,  
 Judge, Superior Court, Philadelphia.  
 J. Willis Martin,  
 President Judge, Common Pleas, Philadelphia.  
 Richard W. Martin,  
 Judge, Common Pleas, Pittsburgh, Allegheny Co.  
 William M. Hargest,  
 President Judge, Common Pleas, Harrisburg,  
 Dauphin Co.  
 Russell C. Stewart,  
 President Judge, Common Pleas, Easton, North-  
 ampton Co.  
 Marion D. Patterson,  
 President Judge, Common Pleas, Hollidaysburg,  
 Blair Co.  
 Wm. S. McClean, Jr.,  
 President Judge, Common Pleas, Luzerne Co.  
 Thomas F. Bailey,  
 President Judge, Common Pleas, Huntingdon Co.

Later on, the above committee will send another notice giving you further details of the meeting; but it may be well to state here that, in due course, you will receive an invitation from Mr. Thomas Robins, the Prothonotary of the Supreme Court for the Eastern District, for a men's luncheon on Friday, February 6th, between the morning and afternoon business sessions of the conference, and another invitation, either from the Lawyers' Club of Phila-

delphia or from some other body representing the bar of that County, for a dinner to the Penal Law Commission, visiting judges, district attorneys, and their ladies. This word is given now so that when such invitations arrive, you will know their acceptance will not interfere with the programme of the conference.

Sincerely yours,

ROBT. VON MOSCHZISKER,  
*Chief Justice.*

## EXHIBIT "C."

## JOINT CONFERENCE ON PENAL LAWS.

## JUDICIAL SECTION.

PHILADELPHIA, March 24, 1928.

DEAR JUDGE:—The program for the Penal Law Conference at Philadelphia, on Friday and Saturday, April 6th and 7th, is as follows:—

A joint meeting of the judges, district attorneys and members of the Penal Law Commission will convene in the Courtroom of the Supreme Court, on the fourth floor of City Hall, at 10 o'clock on Friday morning, April 6th, 1928.

After an address by the Chief Justice, explaining the purposes of the conference and the program of the meeting, the participants will separate into three sections, the judges remaining in the Supreme Court room and the other two groups retiring to nearby rooms, where each will hold its own conference. The judges will then proceed to consider the subjects mentioned in the pamphlet sent you in a prior communication. A committee on co-operation between the three groups composing the conference has been appointed as follows:—

JOHN W. KEPHART, *Chairman*, Supreme Court.

A. R. CHASE, Clearfield County.

JAMES B. DREW, Allegheny County.

J. FRANK GRAFF, Armstrong County.

WM. A. McCONNEL, Beaver County.

WM. M. PARKER, Venango County.

CLAUDE T. RENO, Lehigh County.

URIAH P. ROSSITER, Erie County.

ROBERT A. STOTZ, Northampton Co.

At one o'clock, Mr. Robins, the Prothonotary of the Supreme Court for the Eastern District, will give a luncheon at the Rittenhouse Club for all judges in attendance at the conference. District Attorney Monaghan of Philadelphia will entertain the visiting District Attorneys at luncheon.

Immediately after lunch, at not later than 3 o'clock, the several groups will reconvene at City Hall and hold afternoon sessions.

All speeches in the conference will, so far as possible, be restricted to five minutes. Please bring to the meetings the printed pamphlet containing the list of subjects for consideration, with any helpful notations which you may have made thereon.

On Saturday morning, April 7th, at 10 o'clock, final sessions of the Conference will be held at City Hall.

On Saturday, at 12:30 noon, the Philadelphia Bar will entertain at luncheon, in the ballroom of the Bellevue-Stratford Hotel, all the participants in the joint conference and the ladies accompanying them, who have accepted in writing the invitation issued by the Law Association and the Lawyers' Club of Philadelphia, which invitation should have been received by you before the present notice. Ex-Attorney General Francis Shunk Brown, President of the Lawyers' Club and Chancellor of the Law Association, will preside at the luncheon, which will be addressed by prominent lawyers and judges. This luncheon will take the place of the dinner that had been planned for Friday evening. By this change of plan an opportunity will be afforded for committee work, and Friday evening will be open for private engagements to all members of the Conference not engaged in such work.

Very truly yours,

ROBT. VON MOSCHZISKER, *Chairman*,  
WILLIAM B. LINN, *Vice Chairman*,  
THOMAS F. BAILEY,  
WILLIAM M. HARGEST,  
J. WILLIS MARTIN,  
RICHARD W. MARTIN,  
WM. S. MCLEAN, JR.,  
MARION D. PATTERSON,  
RUSSELL C. STEWART,

*Committee.*

P. S.—If it is your intention to attend the Conference, please fill up the enclosed card and return it at once in the accompanying envelope.

## EXHIBIT "D."

The matters enumerated on the following pages will be brought before a Conference of Pennsylvania Judges to be held in the Court Room of the Supreme Court of Pennsylvania at Philadelphia, on Friday morning and afternoon, April 6, and Saturday morning, April 7, 1928.

## No. 1.

Should not the law permit the district attorney to comment on the failure of one on trial for crime to take the witness stand in his own behalf?

## No. 2.

Has not the time arrived to authorize the trial judge, when he is satisfied from police records that the defendant before him is a professional criminal, to permit the district attorney to introduce such record in evidence, so that the jury may know what sort of person the other evidence in the case relates to, and measure it accordingly?

## No. 3.

A great deal of time is lost, and, on occasions, the Commonwealth is put at a disadvantage in the trial of capital cases where the offense was committed by several persons, by being obliged, on the application of one of the defendants, to try the accused separately. Should the law make the joint trial of such defendants a matter within the discretion of the trial judge?

## No. 4.

In murder cases much time is wasted by overlong examination of prospective jurors on their *voir dire*, particularly to ascertain whether they have been unduly affected by reading newspaper stories concerning the alleged

crime and whether they entertain conscientious scruples against capital punishment. The Act of May 14, 1925, P. L. 759, upon conviction of murder of the first degree, obliges the jury to fix the punishment at death or life imprisonment. Under this act, the question of the examination of prospective jurors in murder cases bids fair to become even more troublesome in the future than it has been in the past, unless something is done to remedy the evil (see *Com. vs. Bentley*, 287 Pa. 539). It has been suggested that valuable time would be saved if such examinations were to be conducted by the trial judge alone, instead of by court and counsel; for the court, the agency designated to determine the points under examination, having, as a rule, special experience in such matters, and never having any purpose to serve other than the securing of an impartial jury, could quickly ascertain how far, if at all, the reading of newspapers and talk in the community had in fact affected the particular venireman under examination, and could make plain to him the precise meaning of "conscientious scruples." Under the present system, the examining counsel, for want of experience, or, more often, to save a peremptory challenge, are all too apt to put into the mind of one prospective juror after another that he has been affected by newspaper stories or community talk, and that he has conscientious scruples against capital punishment. Then a long cross-examination follows, by both court and counsel, to see how far these apparent incapacities on the part of the person called really exist or will affect him if accepted as a juror. It has been suggested that if we made statutory a rule that all examinations of veniremen on their *voir dire* should be conducted exclusively by the trial judge, counsel having the right at the end of the judge's examination to suggest to him questions to be put to the prospective juror, in all probability it would seldom be necessary to go beyond the original panel to find twelve competent jurors, and at least eighty per cent. of the time now consumed in the examination of prospective jurors would be saved.



## No. 5.

(a) The Act of May 11, 1927, P. L. 972, requires appeals in criminal cases to be taken within 45 days; should this period not be further reduced to three weeks? Experience shows that many criminal appeals have no merit whatever.

(b) It has been suggested that, aside from capital cases or where a constitutional question is involved, all appeals in criminal cases should be subject to allowance by a judge of the appellate court to which the appeal is to be taken; should this requirement be recommended?

## No. 6.

(a) Should there not be a statute requiring that in criminal prosecutions all motions subsequent to the verdict shall, as a matter of law, be automatically dismissed thirty days after being made, unless the trial court shall within that period make a final order disposing of them?

(b) Again, should not the statute require in criminal prosecutions that demurrers to indictments, motions to quash, motions for a bill of particulars, and all other motions generally included in the category of dilatory motions shall, as a matter of law, be automatically disposed of against the party making them on the fourth day next after being made unless the court shall within that period make a final order disposing of the motion? All such automatic dispositions shall be accounted in law as orders subject to assignment as error on appeal without the necessity of an exception being entered of record.

(c) There is ground to believe that too much delay occurs in presenting and disposing of motions for new trials in criminal cases, and it has been suggested that the rule prevailing in some Pennsylvania courts, that all such motions must be filed within four days after the verdict, should be made a matter of general law; further, that when a trial tribunal grants a new trial, it must certify of record either that, in its opinion, the evidence was insufficient to warrant

the conviction, or that the error of law which caused the grant of the new trial was material, in the sense that it directly contributed to and brought about the verdict of the jury.

#### No. 7.

Should the law be amended to permit trial by a judge without a jury in certain classes of criminal cases, when the accused voluntarily waives his right to trial by jury? (Commonwealth *vs.* Hall, 291 Pa. 341.)

#### No. 8.

New York has a statute known as the Baumes Act (Laws of New York 1926, Ch. 457, sec. 1942), which provides that a person three times convicted of crimes which would be felonies in that state, who is convicted of a fourth felony, "shall be sentenced \* \* \* for the term of his natural life."

It has been suggested that the conference should consider whether the policy of this act ought to be adopted in Pennsylvania.

#### No. 9.

The Act of June 29, 1923, P. L. 975, commonly known as the Ludlow Act, provides that upon conviction of any criminal offense, the minimum sentence shall be not more than one-half of the maximum sentence. Some judges think this act has not proved beneficial. Shall the conference recommend that it be repealed or amended, and, if the latter course is pursued, what shall the amendment be?

#### No. 10.

A matter which has long interested those concerned in the trial of criminal cases is the subject of expert witnesses and how far the use of such witnesses should be governed by statutory rules, particularly whether all experts in criminal cases should not be designated by the courts, or, if

the law should not advance to this point, how far the calling of such witnesses should be under the control of the court. This question may be brought before the conference for discussion, or it may be sent to a committee for study and report at a future conference.

A few of many articles discussing this question are as follows:—

- 1895—32 *American Law Review* 851-867. Proposed changes in the Law of Expert Testimony.
- 1896—V. Counsellor 121. *Medical Expert Testimony and the Proposed Expert Commission*.
- 1907—15 *American Lawyer* 309-314. *Defense of Insanity in Criminal Cases and Medical Expert Testimony*.
- 1914—9 *Illinois Law Review* 353-356. *Bill of American Institute of Criminology and editorial thereon*.
- 1924—15 *Journal Criminal Law* 341-343. *Article on the methods of abolishing partisanship of expert witnesses. Editorial by Wigmore on the expert testimony in the Loeb-Leopold case*.
- 1925—11 *American Bar Association Journal* 413. *Comment on statute in California for securing impartial experts*.

#### No. 11.

Another point, closely related to the last-mentioned question is, whether the idea of the Massachusetts Act of May 20, 1921 (*Laws of 1921, Chap. 415*), should be adopted in some form in this state. This act reads as follows: "Whenever a person is indicted by a grand jury for a capital offense or whenever a person who is known to have been indicted for any other offense more than once or to have been previously convicted of a felony, is indicted by a grand jury or bound over for trial in the superior court, the clerk of the court in which the indictment is returned, or the clerk of the district court or the trial justice, as the case may be, shall give notice to the department of mental diseases, and the department shall cause such person to be examined with a view to determining his mental condition and the existence

of any mental disease or defect which would affect his criminal responsibility. The department shall file a report of its investigation with the clerk of the court in which the trial is to held, and the report shall be accessible to the court, the district attorney and to the attorney for the accused, and shall be admissible as evidence of the mental condition of the accused.” (Amended in 1927 (Laws of 1927. Chap. 59), to require probation officers, in every case where the offense is punishable by imprisonment for more than one year, to present to the court—before disposition of the case—all information as to previous indictments or convictions, or any other information relative to the defendant.) Some of those who have been writing on the subject think that, in the trial of murder cases, the sole questions for determination should be, whether the murder actually occurred, whether it was committed by the defendant, and self-defense; that a defense of insanity at the time of the commission of the crime should not be permitted; that such a defense should await the result of the original trial, and if the verdict should be against the defendant, then the defense of insanity should be tried as a separate matter, either before a jury of experts or before an ordinary jury assisted by expert witnesses paid by the state. Perhaps this subject presents too big a problem to be taken up for decision at the present time without special preliminary investigation, but, if the conference thinks proper, it can go to a committee for study.

## No. 12.

The question of devising a general method of obtaining a better class of jurors, to apply throughout the state, or methods calculated to accomplish that result fitted to classes of counties according to existing conditions, is suggested for study and serious consideration.

## EXHIBIT "E."

LIST OF JUDGES WHO ATTENDED THE CONFERENCE AT  
PHILADELPHIA ON APRIL 6 AND 7, 1928.*Supreme Court.*

Chief Justice Robert von Moschzisker.  
Justice Robert S. Frazer.  
Justice Emory A. Walling.  
Justice Alex. Simpson, Jr.  
Justice John W. Kephart.  
Justice Sylvester B. Sadler.  
Justice William I. Schaffer.

*Superior Court.*

Judge Frank M. Trexler.  
Judge William H. Keller.  
Judge William B. Linn.  
Judge Robert S. Gawthrop.  
Judge Jesse B. Cunningham.

*Common Pleas.*

	<i>Dist.</i>
Alessandroni, Eugene V.....	1
Bailey, Thomas F. ....	20
Barnett, James M. ....	41
Berkey, John A.....	16
Biddle, E. M., Jr.....	9
Broomall, John M., 3d.....	32
Brown, Francis Shunk, Jr.....	1
Brownson, James I.....	27
Chambers, James A.....	53
Chase, A. R.....	46
Cole, Josiah .....	5
Culver, Charles M.....	42
Darr, William T.....	54

	<i>Dist.</i>
Davis, Howard A.....	1
Davison, Waston R.....	39
Drew, James B.....	5
Evans, Charles C.....	26
Evans, John E.....	47
Ferguson, William C.....	1
Fine, John S.....	11
Finletter, Thomas D.....	1
Fleming, M. Ward.....	49
Fox, John E.....	12
Fronefield, W. Roger.....	32
Gordon, James Gay, Jr.....	1
Graff, J. Frank.....	33
Groff, John M.....	2
Hargest, William M.....	12
Harvey, Frank L.....	18
Henderson, Davis W.....	14
Henninger, John R.....	50
Henry, Chas. V.....	52
Hicks, Roy P.....	21
Hildebrand, R. Lawrence.....	53
Hudson, Thomas H.....	14
Iobst, Richard W.....	31
Jones, Benj. R.....	11
Kent, O. Clare.....	30
Knight, Harold G.....	38
Koch, Richard Henry.....	21
Kosek, John V.....	11
Kun, Joseph L.....	1
Landis, Charles I.....	2
Lewis, Edwin O.....	1
MacDade, Albert Dutton.....	32
MacNeille, Raymond.....	1
McCann, John H.....	47
McConnel, William A.....	36
McCullen, Joseph P.....	1
McDevitt, Harry S.....	1
McKeen, William M.....	3



	<i>Dist.</i>
McLean, Wm. S., Jr.....	11
McPherson, Donald P.....	51
Martin, J. Willis.....	1
Martin, Richard W.....	5
Marsh, Howard F.....	4
Marshall, Elder W.....	5
Maxey, George W.....	45
Mays, H. Robert.....	23
Morrow, S. John.....	14
Niles, Henry C.....	19
Parker, William M.....	28
Patterson, Frank P.....	5
Patterson, Marion D.....	24
Reader, Frank E.....	36
Reed, Samuel L.....	47
Ryan, William C.....	7
Sayers, Albert H.....	13
Schaeffer, Paul N.....	23
Searle, A. T.....	22
Sherwood, Ray P.....	19
Shull, Samuel E.....	43
Smith, A. B.....	34
Smith, Frank.....	1
Stern, Horace.....	1
Stewart, Russell C.....	3
Stotz, Robert A.....	3
Strouss, Frank H.....	8
Taulane, Joseph H.....	1
Whitehead, Harvey W.....	29
Whitehouse, C. A.....	21
Wickersham, Frank B.....	12
Williams, J. Ambler.....	38
Windle, W. Butler.....	15

*Allegheny County Court.*

Sylvester J. Snee.

Samuel J. McKim.

*Municipal Court of Philadelphia.*

Leopold C. Glass, President Judge.  
 Charles L. Brown.  
 James E. Gorman.  
 H. Gilbert Cassidy.  
 William Gray Knowles.  
 Eugene C. Bonniwell.  
 Utley E. Crane.  
 John E. Walsh.  
 William M. Lewis.  
 Thomas Bluett.

*Orphan's Court.*

Holland, J. Burnett.....	38	Dist.
Wilhelm, MacHenry.....	21	"

## EXHIBIT "F."

REMARKS OF CHIEF JUSTICE VON MOSCHZISKER OPENING  
JOINT CONFERENCE OF 1928 ON REVISION OF PENAL  
LAWS.

When Mr. Attorney General Baldrige and Mr. Fox of the Commission on Penal Laws, requested the Chief Justice of Pennsylvania to call a conference of judges, to convene at the same time as the initial meeting of their commission and the annual gathering of district attorneys, he laid the request before the Supreme Court, and that body determined to take a referendum of those who would be asked to attend the conference, if held. A letter was accordingly sent to all of the judges who sit in the criminal courts of the Commonwealth, asking whether, in their opinion, such a meeting should be called; and, as April 6th and 7th seemed to be the only days which fitted into the calendars of most of the courts of the various counties, those addressed were asked, if they favored the proposed conference, whether these dates would suit them. The replies received were almost unanimous in favor of holding the conference, on the days suggested. Hence we are here, and it is my duty and pleasure, as chairman of the committee in charge, to welcome you,—members of the commission, judges and district attorneys,—to this meeting, and to outline its purposes in a very brief way.

An editorial writer, in a recent issue of the Philadelphia Record, referring to this conference, well said that the crime problem is of such vast complexity that there is always a temptation to extend an inquiry concerning it "into endless ramifications, with contentious debates over the causes of criminality, the reclamation of offenders and multitudinous theories for eliminating crime through the reorganization of society, the abolition of punishment and the 'scientific' treatment of lawbreakers." The same writer truthfully added that "Many ideas of this nature merit study, but to introduce them means to raise such abstruse questions of sociology, psychiatry and penology that the urgent project

of reducing crime becomes bogged down in a morass of conflicting theories." I hope we may avoid the bogs mentioned by this writer.

We are not here to discuss the so-called crime wave,—a much abused expression. Everything seems to have grown bigger of late years, and it is not to be wondered at that criminality has shared in this general growth; for temptations to commit and facilities for committing crime have increased. I doubt very much, however, whether existing conditions can properly be characterized as constituting a crime wave. Whether I am right in this or not, I think most of us will agree that, in some respects, our court methods of meeting present day criminal conditions have become antiquated. Therefore we have gathered to discuss certain features of the criminal law, especially on its administrative side, and to decide what can be done to make it fit the times in Pennsylvania.

Many think the old form of indictment should be changed; some believe the distinction between felonies and misdemeanors should be dropped, and that other changes in form ought to be adopted; but those who formulated the agenda for the judicial section of this conference thought we should, at the present meeting, take up only matters of substance, not of form, however important the latter might be. It also seemed best not to enter upon what may be termed the social causes of crime, nor attempt to consider extraneous, alleged scientific, methods of crime prevention, but to devote ourselves to solving some of the most pressing problems which we, as judges, meet in the actual trial and sentencing of defendants in the criminal courts. The other sections of the conference may with entire propriety think it wise to enter wider fields; that is for them to determine.

Even within the restricted areas which the judicial section will enter, we have narrowed the program for our work; this course was decided on, not because those in charge of the preliminary arrangements failed to appreciate the many diverse themes that might very properly be

considered, but rather because of the impracticability of undertaking additional subjects in the limited time at our disposal.

While the subjects for consideration by the judicial section are restricted to those which have to do with the trial and sentencing of persons accused and convicted of crime, yet it must constantly be kept in mind that prompt and efficient administration of the criminal law by the courts is one of the best deterrents of crime; that, to give such service, those having the responsibility must be furnished with proper tools with which to work, and that they cannot produce good results with outworn implements. Rules of law are the tools of our craft, and the courts cannot serve the public well unless the people, through their representatives in the legislature, are willing to bring these rules up to date. The people have a right to ask the judges to inform the commission appointed by the legislature in regard to reforms which their judicial experience indicates are necessary to achieve the end desired; that advice has been asked of us, and we are here to formulate, or to attempt to formulate, helpful replies.

Much of the criminal law, dealing with both substance and procedure, took shape in the past, when conditions were radically different from those of today, at a time when urban communities were smaller and life was much simpler; before the period of quick locomotion and almost instantaneous communication; before the age of organized crime, and almost before we had a class of professional criminals. In those days, society,—in order to minimize the probability of wronging individual members through the imposition of the heavy penalties then so generally inflicted (frequently the death penalty),—guarded the trial of those accused of crime with many rules which have become wholly inappropriate to the present age; some of these are embodied in our statutes, and others are common law rules, so firmly established that, according to our custom, it will take legislation to change them.

We have not gathered, however, to draft statutes; we



are here merely to formulate our views, after discussion, and to express them to the Crime Commission, which, in turn, will advise the Legislature, whose duty it is to make the statute law and to initiate constitutional amendments. We need not even debate whether certain of the suggestions on our program require constitutional amendments. If such amendments are required to give validity to proposed legislation, let us take it for granted, so far as our present work is concerned, that, should we recommend anything which calls for a change in the fundamental law, and our advice is accepted, the change will be made in due order. If we pursue this course it will lessen our work. I offer this suggestion both to the conference of judges and to the district attorneys in conducting their own separate conference.

May I venture one other general suggestion, and that is this: The purpose of law is to make organized society possible; to fulfill this purpose, the law at times protects the individual, but it must never be overlooked that this special protection of the individual is a mere incident of effective social organization, not its primary object; the real object of the criminal law is to protect society as a whole. Again I say to you who have gathered here on the important mission we are all about to undertake, if the underlying principles to which I have just referred are kept in mind and my suggestion to avoid discussion of constitutional points is heeded, our several tasks will be greatly simplified.

To facilitate the labor of the judicial section, the committee in charge outlined the 12 propositions printed in the pamphlet which was sent out more than a month ago to all of the judges who sit in the criminal courts of the State. This was done so that they might have a fair opportunity to consider, well in advance of our meeting, the subjects set for discussion.

Pennsylvania can boast of being rid of many rules that fetter the administration of justice and form matters of complaint in other states. For instance, the rule restricting



the trial judge from commenting on evidence; again, the rule that an erroneous instruction which by any possibility might have affected the verdict should be counted reversible error, and others that could be mentioned. We still, however, have plenty of room for reform, and might have added many other suggestions to those which appear on the agenda; but it was the consensus of opinion of the men who had to do with the advance work of this conference that it was better to take up a few matters, which seemed of prime importance, and concentrate upon them, than to spread our attention over too large a range.

Each section of this joint conference has arranged its own program and the committee in charge of the judicial section has had no part in deciding on the work of the other sections. As I understand the situation, the commission hopes that the district attorneys, when they go into their own separate conference, will consider some of the subjects on the judicial program and others which we judges do not purpose to take up; and, in the end, that both groups will tender to the commission advice which may be used in reporting to the Legislature.

I repeat, we are met to discuss the present condition of the criminal law and to suggest to the legislative commission what can be done, within the limited range of subjects selected by us for consideration at this conference, to bring that branch of the law abreast of the times, so that it may more adequately serve the people of Pennsylvania. In discussing the several propositions which I shall shortly put before you (and when I say "you" I mean the judicial section), please remember that we are to report to the commission our advice on matters of policy and expediency alone, not on matters of law, in the sense of drafting statutes. That is to say, we are to determine whether, in our opinion, certain changes ought to be made in the law, and advise accordingly. Whether these changes shall in the end be made, and, if so, whether by legislation alone or by constitutional amendment, are questions for those who have the ultimate responsibility to determine.

We shall give the questions on the agenda as printed right of way in the order in which they are enumerated; then, if there is any time left, the meeting will be open for new suggestions, either to be considered here and now, or to be submitted to committees appointed to study them and, if you so wish, to report at a future judicial conference.

The committee in charge has decided that, in discussing the several subjects which will be brought before this conference, a five-minute rule should prevail; so I request that, when you rise to address the chair, you will first state your name and county, for the record, and that you will confine your remarks as nearly as may be within a five-minute limitation.







